



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/480,344	01/10/2000	KEVIN MICHAEL RUPPELT	9D-EC-19337	4210

7590 02/08/2005

John S. Beulicck
Armstrong Teasdale LLP
Suite 2600
One Metropolitan Square
St. Louis, MO 63102

EXAMINER

SMITH, JEFFREY A

ART UNIT	PAPER NUMBER
----------	--------------

3625

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/480,344

Applicant(s)

RUPPELT ET AL.

Examiner

Jeffrey A. Smith

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-14,16-26 and 28-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-14,16-26 and 28-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 January 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 2, 2005 has been entered.

Response to Amendment

Claims 1, 3-14, 16-26, and 28-45 are pending.

Claims 1, 14, 19, 21, 25, and 23 have been amended.

Claims 2, 15, and 27 have been cancelled.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3625

Claims 3 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3 and 16 have been presented as depending from cancelled claims. For examination purposes claim 3 has been interpreted as depending from claim 1, and claim 16 has been interpreted as depending from claim 14. Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5, 11-14, 18, 25, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Rofrano (U.S. Patent No. 6,035,283).

Art Unit: 3625

Rofrano discloses a method, tool, and program product for product selection assistance (col. 1, lines 6-14) comprising, *inter alia*, receiving a product category selection (col. 4, lines 34-38); matching the selection against a product database (abstract); displaying a product matrix (col. 3, lines 55-62; and Table 1); presenting a configuration question (col. 4, lines col. 39-42); receiving a configuration answer (col. 4, lines 34-38); and responsively updating the product matrix comprising removing the selected product configuration parameter from the matrix (note box "207" in Fig. 2; and col. 3, lines 55-62). Product color is disclosed (col. 3, lines 55-57). The database described by Rofrano is interpreted as comprising a hard disk storage medium. Model identifiers are considered to be disclosed under the category "ProductName" in Table 1. Such model identifiers are considered to be Rofrano's generic representations of brand name.

Regarding claim 11: see Rofrano at col. 4, line 29-col. 4, line 42.

Regarding claims 13, 18: see first Q/A at col. 4, lines 53-54.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 16, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rofrano (U.S. Patent No. 6,035,283).

Rofrano does not disclose inserting an additional product configuration parameter in the product matrix to replace the selected product configuration.

However, it is noted that Rofrano teaches a question script (col. 4, lines 42-65) which amounts to a succession of questions that are presented once an answer to a previous question is answered. Rofrano also teaches that each answer has the ability to link other lines of questioning--thereby creating the "Question and Answer Tree" (col. 3, lines 46-52).

It would have been obvious to one of ordinary skill in the art to have inserted additional product configuration parameters in the product matrix to replace the selected product configuration parameter in order to continuously and dynamically

Art Unit: 3625

update and fine tune the matrix owing to the "Question and Answer Tree".

Claims 30-37, and 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rofrano (U.S. Patent No. 6,035,283).

Rofrano does not disclose the products are specifically a refrigerator, a washer, a dryer, or an air conditioner.

Rofrano, however, teaches that their invention provides a way for employing the vast knowledge of a skilled sales agent to assist actual shoppers using an electronic catalog (col. 3, lines 8-10). Rofrano uses an example of a camera as a type of product which often requires knowledgeable input from a sales agent.

Despite being silent to other specific products, it is clear that products such as refrigerators, washers, dryers, and/or air conditioners could have been employed in the Rofrano invention. This is because such products are known to be offered in various configurations across brand lines and across model lines, for example. The input of a skilled sales agent is invaluable when trying to arrive at a selection of one of these products in the same manner as arriving at a selection of a camera (as already taught by Rofrano).

Art Unit: 3625

Accordingly, it would have been obvious to one of ordinary skill in the art to have provided the invention of Rofrano to have allowed for the consideration of refrigerators, washers, dryers, and/or air conditioners in order to have provided the benefit of the knowledge of a sales agent in the complex consideration of such products.

Claims 4, 6-10, 17, 19-24, 29, and 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rofrano (U.S. Patent No. 6,035,283) in view of Sammon, Jr. et al. (U.S. Patent No. 6,012,051).

Rofrano does not explicitly teach a "web" environment, and accordingly does not teach user interfaces typical of a "web" environment. Such interfaces include toggle buttons, other buttons (i.e. "Compare" buttons), hyperlinks, etc.... However, it is noted that Rofrano recognizes that similar product selection methods, tools, and program products are employed in a "web-type" environment. Rofrano acknowledges catalogs being offered through dial-up computer services such as PRODIGY (TM) (col. 1, lines 29-37).

Sammon, Jr. discloses a similar product selection method, tool, and program product (col. 1, lines 6-12), and also discloses employing a "web" environment by providing a web page

Art Unit: 3625

comprising a plurality of user input interfaces (see Figs. 4-13 and their respective descriptions). Sammon, Jr. teaches that such input interfaces may comprise check boxes (col. 12, lines 52-56), toggles (col. 13, lines 7-10), buttons (col. 13, lines 30-33), and, of course, support of hyperlinks (col. 5, lines 56-56-62).

It would have been obvious to one of ordinary skill in the art to have provided the invention of Rofrano to have been provided in a "web" environment and to have made use of known input interfaces such as web pages incorporating buttons, toggles, hyperlinks, etc... (such as taught by Sammon, Jr. in order to have taken advantage of the World Wide Web as an extensive communications network.

Regarding claims 4, 24, and 29: Rofrano teaches the presentation of products for the purposes of providing a "side-by-side" comparison (col. 4, lines 38-41). Rofrano, however, does not teach the activation of toggle buttons and a "Compare" button to arrive at such "side-by-side" comparison.

However, and as noted above, Sammon, Jr. teaches the use of toggles and buttons in order to allow the user to input instructions to their "web-based" invention. It would have been obvious to one of ordinary skill in the art to have provided the

Art Unit: 3625

invention of Rofrano to have included the "web-based" functionality of Sammon, Jr. in order to have allowed the user to have designated products for a side-by-side comparison at any time and to have arrived at the "side-by-side" comparison display such as that already taught by Rofrano.

Regarding claim 6: Rofrano does not disclose formatting model identifiers as hyperlinks.

However, and as noted above, Sammon, Jr. teaches the use of HTML which supports hyperlinking.

It would have been obvious to one of ordinary skill in the art to have hyperlinked any identifier in order to have provided an easily accessible source for information particular to the identifier. Such functionality of hyperlinking is well-known in the art and would have served to provide cross-referencing between a page and other arrangements of related information-- i.e. one or more other pages.

Regarding claims 7 and 20: Rofrano does not disclose the specific column headings recited here.

However, the differences between the Rofrano headings (see Table 1) and those of the instant invention lie solely in the nature of the descriptive material. In the instant case, the

Art Unit: 3625

descriptive material is non-functional since it does not affect or effect the underlying display of data. Accordingly, such specific headings cannot serve to patentably distinguish the instant invention from any other obvious variation of the Rofrano headings--any such variations being obvious variations of the headings already taught by Rofrano.

Regarding claim 8: Rofrano, thus modified to include the obvious headings of claim 7, still does not provide an "input and sort" functionality.

However, and as discussed above, Sammon, Jr. teaches a "web" environment employing the HTML.

It would have been obvious to one of ordinary skill in the art to have provided such well-known web functionality as an "input and sort" for the various displayed columns in order that the user may organize the displayed data in a desired order (e.g. in ascending order by "Price").

Regarding claims 9, 17, and 22: Rofrano does not disclose formatting product parameters as a hyperlink.

However, the Examiner's position on this limitation is the same as that identified above with respect to claim 6.

Art Unit: 3625

Regarding claims 10 and 23: Rofrano does not disclose displaying outside the product matrix the product configuration answer.

Sammon, Jr., however, teaches maintaining answers to previous questions along a side of a navigation window (col. 12, lines 19-43).

It would have been obvious to one of ordinary skill in the art to have provided the invention of Rofrano to have included displaying outside the product matrix the product configuration answer in order to have assisted the user regarding the user's position in a sequence of questions/answers as well as the user's progress in narrowing the product choices (col. 12, lines 44-48).

Regarding claim 21: Rofrano does not provide an "input and sort" functionality.

However, and as discussed above, Sammon, Jr. teaches a "web" environment employing the HTML.

It would have been obvious to one of ordinary skill in the art to have provided such well-known web functionality as an "input and sort" for the various displayed columns in order that the user may organize the displayed data in a desired order (e.g. in ascending order by "Price").

Regarding claims 38-41: Rofrano/Sammon, Jr. does not provide that the products are specifically a refrigerator, a washer, a dryer, or an air conditioner.

Rofrano, however, teaches that their invention provides a way for employing the vast knowledge of a skilled sales agent to assist actual shoppers using an electronic catalog (col. 3, lines 8-10). Rofrano uses an example of a camera as a type of product which often requires knowledgeable input from a sales agent.

Despite being silent to other specific products, it is clear that products such as refrigerators, washers, dryers, and/or air conditioners could have been employed in the Rofrano/Sammon, Jr. combination. This is because such products are known to be offered in various configurations across brand lines and across model lines, for example. The input of a skilled sales agent is invaluable when trying to arrive at a selection of one of these products in the same manner as arriving at a selection of a camera (as already taught by Rofrano).

Accordingly, it would have been obvious to one of ordinary skill in the art to have provided the combination of Rofrano/Sammon, Jr. to have allowed for the consideration of

Art Unit: 3625

refrigerators, washers, dryers, and/or air conditioners in order to have provided the benefit of the knowledge of a sales agent in the complex consideration of such products.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3-13, and 30-33 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 09/681,393. Although the conflicting claims are not identical, they are not patentably distinct from each other because the method of configuring a product is the same,

Art Unit: 3625

regardless of the fact that the products or the features stored in association with them are not identical.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 14, 16-18, and 34-38 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17-29 of copending Application No. 09/681,393. Although the conflicting claims are not identical, they are not patentably distinct from each other because the system for facilitation selection of a product is the same, regardless of the fact that the products are not identical.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 25, 26, 29, and 42-45 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 30-35 of copending Application No. 09/681,393. Although the conflicting claims are not identical, they are not patentably distinct from each other

Art Unit: 3625

because the system for facilitating selection of a product is the same, regardless of the fact that the products are not identical.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

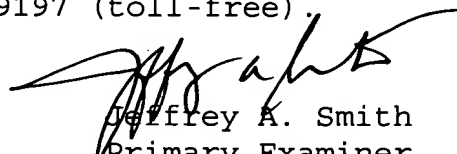
Applicant's arguments with respect to claims 1, 3-14, 16-26, and 28-45 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is 703-308-3588. The examiner can normally be reached on M-F 6:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3625

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey A. Smith
Primary Examiner
Art Unit 3625

jas